S.B. CIVIL WRIT PETITION NO.1808/2005

Om Industries vs. Rajasthan Financial Corp. & Ors.

Date : 20.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. AK Rajvanshy, for the petitioner.

Mr. DS Rajvy, for the respondents.

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Heard learned counsel for the parties.

The brief facts of the case are that a sick industrial unit M/s. Mundra Industries, F-119, Mandore Industrial Area, Jodhpur was put for auction as the said industry became defaulter in repayment of loan amount of the Rajasthan Financial Corporation (for short “RFC”).

The petitioner gave its bid and that bid was accepted by the RFC. The approval letter was issued to the petitioner by RFC on 14/16.7.2003. The price of fixed assets was assessed as Rs.24.01 lakhs and the petitioner was directed to make initial payment of Rs.6.01 lakhs being 25% of the sale price within a period of 15 days from the sanction letter. The petitioner deposited the said amount of Rs.6.01 lakhs in time. The petitioner was to pay balance amount of Rs.18.06 lakhs within a period of 5½ years in 19 quarterly installment. The first installment was to fall due on first day of 12th months reckoned from the date of auction i.e. on 1.7.2004. Clause 4 further provides that the first 18 quarterly installments shall be of Rs.95,000/-

each and the last installment i.e. 19th installment shall be of Rs.90,000/- falling due on 1.1.2009.

The petitioner was also liable to pay interest at the rate of 13.75% per annum on quarterly basis from the date of takeover of possession of the assets or after expiry of 30 days of approval of sale which ever is earlier. There are provision for an additional interest in case of default in payment of installment.

Apart from it, an important and relevant fact for the purpose of this writ petition is that the RFC in their auction notice itself very clearly mentioned that the RFC shall be liable to pay all the dues of electricity supply companies, sales tax department, liability against land and building tax, liability of erstwhile unit for excise, water supply, industries department etc.

According to the petitioner, despite specific condition mentioned in the auction notice (Annex.1) about liability of RFC to pay the electricity charges of the erstwhile unit, the RFC did not pay the total due amount of Jodhpur Vidhyut Vitran Nigam Ltd., Jodhpur (for short "JVVNL") despite the fact that the electricity supply company vide their letter dated 18.11.2003 informed the RFC about the total outstanding against Mundra Industries and also informed RFC that unless the outstanding amount of Mundra Industries are paid, the electricity connection shall not be released in favour of the petitioner – purchaser unit. The RFC did not pay the total dues of M/s. Mundra

Industries to electricity supply company on the basis of a decision dated 26.7.2002 wherein it is provided that the RFC will pay only 30% of the amount received by RFC from the purchaser of the unit.

The petitioner's case is that since there were dues of electricity supply of the erstwhile unit and the RFC failed to discharge their liability, therefore, JVVNL refused the electricity connection for petitioner's unit and this fact was in the knowledge of RFC. The petitioner also by letter dated 16.11.2004 informed RFC that he is not in position to run the industry despite the fact that he has paid total Rs.6 lakhs and has invested Rs.3 lakhs over the unit. The petitioner vide letter dated 16.11.2004 even demanded that the RFC may repay Rs.9 lakhs along with interest and may take possession of the industrial unit but instead of redressing the difficulties of the petitioner, the RFC issued notice under Section 30 of the State Financial Corporation Act, 1951 on 19.1.2005 demanding a total amount of Rs.21,64,056/-. The petitioner raised objection about raising of this demand and thereafter preferred this writ petition.

The respondents have submitted reply to the writ petition and placed on record a circular of RFC dated 26.7.2002. According to the RFC, they have framed a scheme for payment of dues of the State Government departments and also for payment of electricity dues of the erstwhile units whose possession has been taken over by the RFC and resold

on cash down basis or on basis of deferred payment basis. As per this circular, the RFC decided to pay 30% of the share of the State Government's department within 30 days in case the units are sold on cash down basis and in case of deferred payment sale, the share as received from the purchaser will be remitted on proportionate basis within three months.

In para no.7 of the reply it is stated that the respondents made all efforts for release of electricity connection and according to them, due to adamant attitude of JVVNL, the electricity connection could not be released.

Learned counsel for the respondents submitted that by 31.12.2003, the RFC deposited Rs.1,80,300/- against the electricity dues of M/s. Mundra Industries which is 30% of the installments which has been paid by the petitioner to RFC and, therefore, according to learned counsel for the respondents, the RFC paid the electricity dues amount upto the amount of 30% by 31.12.2003.

I have considered the submissions of learned counsels for the parties.

It is clear from the stand taken by the RFC itself that so far as liability of the electricity dues of the erstwhile unit, which was sold to the petitioner, is concerned, there is no dispute and the RFC is liable to pay the electricity charges. It appears that the State Government, to resolve issue of payments by RFC in cases where RFC received sale proceeds from sale of industrial

units financed by RFC issued order No.F.4(10)FD/Tax/2002 dated 5.4.2002 providing that the sale proceeds shall be apportioned 70:30 between RFC/RIICO and the State Government departments, viz. Electricity Companies, Tax Department, State Excise, PHED, Industries etc. In pursuance of the above Government order dated 5.4.2002, the RFC issued a circular on 26.7.2002 and the relevant portion of circular dated 26.7.2002 is as under :-

> "In case the assets of the possessed units are sold on cash down basis, then the 30% share of the State Govt. Departments would be remitted within 30 days and in case of deferred payment sale, the share as received from the purchaser would be remitted on proportionate basis within 3 months and in case of non payment/delay, 12% interest shall be charged by the State Government."

It appears from the letter of JVVNL dated 18.11.2003 that one letter was written by the A.En. in response to the RFC's letter dated 10.10.2003 wherein JVVNL informed that without clarification from the higher authorities in regard to the outstanding dues position of M/s. Mundra Industries, the office of A.En. is not able to release connection to the new occupier M/s. Om Industries as there are dues. Therefore, it appears that RFC's position was either not accepted by the electricity supply company or there was some dispute about it. However, the fact remains is that the petitioner who was supposed to pay the amount as per

the conditions on which the property was sold by RFC, he paid the initial payment of Rs.6.01 lakhs. The liability to pay the electricity dues was of the RFC. If the electric connection was not released to the petitioner's purchased industrial unit despite the written understanding between RFC, State and the Electricity Company, the petitioner cannot be made to suffer. It is not in dispute that the electricity connection was not released to the unit because of the only reason of not making payment of the dues of the erstwhile unit and, therefore, the petitioner who had intention to run Gwar Gum Mill could not run the industrial unit. The electricity is lifeline of the industry in the present case and, therefore, there are reasonable grounds for taking a lenient view in favour of the petitioner by RFC and learned counsel for the petitioner since submitted that the petitioner is ready to settle the matter amicably in case he is given benefit under any existing scheme for reschedulement of payments.

In view of the above facts, it will be just and proper to direct RFC to consider the proposal of the petitioner for reschedulement of payment of loan amount keeping in mind that this cannot be said to be a case of wilful default of the petitioner alone because of the simple reason that the petitioner took possession of the unit on 9.9.2003 and the electricity supply company gave letter to RFC on 18.11.2003 and informed that clarifications are needed from the higher authorities and the electricity connection cannot be released to the petitioner. It is also

admitted case that the RFC has not paid full outstanding amount of Mundra Industries, may it be on the basis of their decision dated 26.7.2002 for which the electricity supply company demanded certain clarifications but these facts clearly reveal that even after three months, there were dues of electricity and the liability of RFC was there to pay or arrange the electricity connection by persuading the electricity supply company. Therefore, these grounds were sufficient grounds for giving some relief to the petitioner.

I do not find any force in the submission of learned counsel for the respondents that the petitioner has not paid the subsequent installments as ordered by this Court on 29.3.2005, therefore, the petitioner is not entitled for any relief because of the reason that the petitioner was deprived from the electricity connection for such a long period and that deprivation was not because of the fault of the petitioner and the petitioner never agreed that in case the electricity connection will not be released by the electricity supply company on deferred payment of RFC, then the petitioner will pay the said amount and will obtain the electricity connection. When the petitioner was made to understand that the liability of the electricity connection shall be of RFC, then he reasonably accepted that the RFC shall either pay the entire electricity due in time or pursued the electricity supply company to release the electric connection on deferred payment basis. The electricity supply company in the facts of the case was

neither necessary nor proper party because this is not a case where this Court is deciding any liability of the electricity supply company for any compensation for non-compliance of the directions of RFC and the State. The petitioner is not seeking any relief against the electricity supply company because he is relying upon the condition of auction notice which clearly provides that the dues of the electricity supply company shall be of the RFC and not of the petitioner.

In view of the above, this writ petition is partly allowed. The notice dated 19.1.2005 issued by RFC is quashed and set aside. The petitioner may submit his proposal before the RFC within a period of 15 days from today along with the copy of this order and the RFC may decide the representation under any scheme of settlement or reschedulement which may be more beneficial to the petitioner and by taking a reasonable sympathetic attitude so as to arrive at a settlement within the framework of the scheme and it is also made clear that the petitioner shall deposit requisite fees required for institution of proposal which RFC may inform within a period of three days through the petitioner's counsel.

(PRAKASH TATIA), J.

S.Phophaliya